

FILED
for Roanoke
JUN 30 2008

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

SHAWN L. HENDERSON,
Plaintiff,

v.

UNKNOWN,
Defendants.

Civil Action No. 7:08cv00303

MEMORANDUM OPINION

By: Hon. Jackson L. Kiser
Senior United States District Judge

By memorandum opinion and order entered on May 1, 2008, the court dismissed plaintiff's complaint because, according to court records, plaintiff has had well over three previous civil rights complaints dismissed on the grounds that they were frivolous, malicious, or failed to state a claim¹ and, therefore, may not proceed unless he either pays the \$350.00 filing fee in full or shows that he is "under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). As plaintiff neither prepaid the filing fee nor demonstrated that he is "under imminent danger of serious physical injury,"² the court dismissed the complaint.

¹ See, e.g., Henderson v. Peters, 2:03-cv-168 (S.D. Ind. June 18, 2003); Henderson v. Unknown, 3:05-cv-299 (N.D. Ind. July 11, 2005); Henderson v. Unknown, 3:05-cv-404 (N.D. Ind. July 11, 2005); Henderson v. The Wizard of Oz, 3:06-cv-734 (October 30, 2006) (also notifying plaintiff that he is a restricted filer in the 7th Circuit). In each of these cases, plaintiff was advised and reminded of his "three strike" status and ineligibility to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(g).

² Plaintiff styled his complaint as an affidavit, which included, *inter alia*, the following (quoted verbatim): "For services rendered, this court must immediately pay Shawn L. Henderson £ 100 million pounds via U.S. postal money order which this court must immediately deliver said postal money order." Plaintiff stated four similar paragraphs, and then stated that, "[f]or services rendered, Senator Baraxa [sic] Obama must be elected the next president of the United States – [sic] of America." The court noted that the allegations fail to suggest that plaintiff faces "imminent" danger of "serious" physical harm, and added that, were plaintiff not subject to the restrictions set out in 28 U.S.C. § 1915(g), the complaint would have been dismissed as frivolous. Pursuant to § 1915A(b)(1), the court must dismiss a complaint as soon as practicable if the court determines that the complaint is "frivolous, malicious, or fails to state a claim upon which relief may be granted." A complaint may be dismissed as frivolous if it "lacks an arguable basis in law or fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). A complaint lacks an arguable basis in law or fact if it contains factual allegations that are "fantastic or delusional" or if it is based on legal theories that are indisputably meritless. Id. at 327-28. Under this standard of frivolity, "a court is not bound, as it usually is when making a determination based solely on the pleadings, to accept without question the truth of the plaintiff's allegations." Denton v. Hernandez, 504 U.S. 25, 32 (1992).

Thereafter, plaintiff filed a full complement of frivolous documents of the sort described in the court's opinion of May 1, 2008.³ Plaintiff was thereby warned that if he were to submit any further frivolous filings to this court, the court would issue a pre-filing injunction against him. See Cromer v. Kraft Foods of North America, Inc., 390 F.3d 812, 818 (4th Cir. 2004). Plaintiff was advised that

[p]risoners do not have an absolute and unconditional right of access to the courts in order to prosecute frivolous, malicious, abusive, or vexatious motions. Demos v. Keating, 33 Fed. Appx. 918 (10th Cir. 2002); Tinker v. Hanks, 255 F.3d 444, 445 (7th Cir. 2001); In re Vincent, 105 F.3d 943 (4th Cir. 1997). Plaintiff is hereby warned that future frivolous filings will result in the imposition of a pre-filing review system. Vestal v. Clinton, 106 F.3d 553 (4th Cir. 1997). Ordinarily, when such a system is placed in effect, the first step, before the imposition of a pre-filing injunction, is that pleadings presented to the court that are not made in good faith and do not contain substance are summarily dismissed as frivolous. Foley v. Fix, 106 F.3d 556 (4th Cir. 1997); In re Head, 19 F.3d 1429 (table), 1994 WL 118464 (4th Cir. 1994). In plaintiff's case, however, it is clear from the dockets of other courts that plaintiff has engaged in a series of abusive and frivolous filings, and is subject to at least one pre-filing injunction in the courts of the jurisdiction where he is incarcerated.^[4] Therefore, if such writings persist, plaintiff will receive no further warnings, a pre-filing injunction from further filings will be imposed against plaintiff, and any future frivolous filings will subject plaintiff to the imposition of monetary sanctions. See 28 U.S.C. § 1651(a); Fed. R. Civ. P. 11(b) and (c); In re Martin-Trigona, 737 F.2d 1254 (2d Cir. 1984).

The case is now before the court upon consideration of plaintiff's latest filing [docket no. 6], consisting of a copy of the court's order of May 16, 2008, which plaintiff has submitted to the court covered with gibberish of the following nature scribbled in manuscript between the lines:

Registration of transfer of this instrument is requested in the name of Shawn L. Henderson 935411 under the Uniform Commercial Code at UCC § 8-401. Thus, this

³ See also n. 2, supra, and n. 4, infra.

⁴ See Henderson v. The Wizard of Oz, 3:06-cv-734 (October 30, 2006); see also the other cases remarked at n. 1, supra. Court records indicate that plaintiff has filed at least 11 such actions in the Northern and Southern Districts of Indiana; also, on May 12, 2008, in the United States District Court for the Northern District of Florida, plaintiff filed a complaint styled as Henderson v. Lord of the Rings, Civil Action No. 1:08-cv-108.

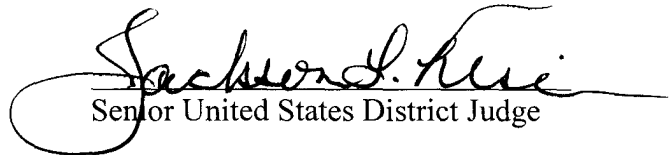
court is instructed to register transfer. UCC § 8-301 (b) provides that delivery of an uncertificated security occurs when the purchaser hereof becomes the registered holder. Presidential candidate. John McCain must not be elected the next President of the United States of America. . . . The Governing Law hereof is the Uniform Commercial Code (2003 Ed.) The entire United States Government must permanently worship and serve Almighty God Allah the love of the worlds. . . . The United States Government through this court must fully pay the payee Shawn L. Henderson 93511 the entire United States of America which is irrevocable and free of any adverse claims. . . .

The preceding is but a brief sample of the content of plaintiff's submission.

Given the explicit warning in the court's order of May 16, 2008, quoted above, and plaintiff's demonstrated persistence in filing frivolous submissions, which have no good-faith basis, are intended only to harass, and are a burden upon this court's resources, the court has no alternative but to enter a pre-filing injunction against him in order to protect the court. Accordingly, as plaintiff has continued to submit frivolous and abusive filings, the court will issue a pre-filing injunction against him. See Cromer, 390 F.3d at 818.

The Clerk of the Court is directed to send a certified copy of this memorandum opinion and the accompanying order to plaintiff.

ENTER: This 30th day of June, 2008.


Senior United States District Judge